

Utah Solid and Hazardous Waste Control Board
MEETING MINUTES
August 14, 2008
1:00 p.m.

Board Members Present: Carlton Christensen (Chair), John Newman (Vice Chair), Craig Anderson, Michael Brehm, Ryan Dupont, Craig Forster, Kevin Murray, Gary Mossor, Dennis Riding, and Rick Sprott.

Board Members Excused: Scott Bruce, Kory Coleman, and Jeff Coombs.

Staff Members Present: Dennis Downs, Brad Johnson, Scott Anderson, Gary Astin, Therron Blatter, Shane Bekkemellom, Mark Christensen, Ed Costomiris, Martin Gray, Arlene Lovato, Dale Marx, John Menatti, Terry Montgomery, Mike Pecorelli, Cheryl Prawl, John Waldrip, Otis Willoughby, and Raymond Wixom.

Others Present: Shane Whitney, Ted Ryba, Les R. Ashwood, David Gibby, Christian Ward, Dan Shrum, Tressa Parker, Tim Orton, Troy Johnson, Kris Snow, Elizabeth Lowes, Becki Bryant, and Bruce Eloff.

I. Call to Order

Carlton Christensen (Chair) called the meeting to order at 1:07 p.m.

II. Approval of Meeting Minutes for the June 12, 2008, Board meeting (Board Action Item)

Dennis Riding moved to approve the June 12, 2008, Board meeting minutes. The motion was seconded by Craig Anderson and **UNANIMOUSLY CARRIED.**

III. Underground Storage Update

Brad Johnson informed the Board members that the cash balance for the Petroleum Storage Tank (PST) Fund is approximately 12 million dollars, and that the Division of Environmental Response and Remediation (Division) is working closely with the actuary to provide information for the fiscal year 2008 actuarial report. According to the 2007 report, the cash balance of the Fund at the end of fiscal year 2008 was projected to be 11.3 million dollars.

Mr. Johnson then provided an update to the Board members on the cleanup status of the Gunnison Top-Stop facility. The public comment period associated with the Corrective Action Plan (CAP) ended on June 19, 2008, and the Division received a number of comments. Most of the comments received dealt with the restoration of personal property. Other comments dealt with concerns regarding indoor air. After reviewing the comments, the Division sent a letter to Wind River Petroleum (Wind River) to instruct them to revise the CAP in response to the comments that were submitted. The revised CAP is due September 30, 2008. However, a lot of the personal property restoration activities have already begun or have already been completed.

In spite of the progress currently taking place at the facility, there is still one resident that has not been able to return to their home. This is due to the fact that the home is directly in the path of the contamination plume and that the foundation walls have been saturated with petroleum. If Wind River cannot make the property habitable within a reasonable time frame, the Executive Secretary (UST) has the authority to order Wind River to come to some sort of an agreement with the property owner. A deadline of September 21, 2008, has been given to Wind River to resolve this issue.

Another issue associated with the Gunnison site is the rise in the water table of approximately 2 to 3 feet that occurred over the Spring/Summer. Due to this rise, some dilution of the gasoline plume has occurred. This has also caused the remediation system to be less effective than it was previously. As

of the middle of July, it was estimated that 11,000 gallons of fuel out of the approximately 20,000 gallon release was removed from the subsurface.

Mr. Johnson then finished by stating that in a recent Deseret News article, it gave details on how the Federal Emergency Management Agency (FEMA) is in the process of determining how many Underground Storage Tanks (USTs) they have throughout the nation and how many they are responsible for. This is to ensure that the agency is being compliant with all of the associated rules and regulations. There are 4 known USTs within the State of Utah that meet this criteria and they are all closed. The Division will continue to work with the FEMA and their consultants to identify any others that may exist within the State and ensure that they are either closed or are in compliance with existing rules.

IV. Request for Final Adoption of Proposed Rule Changes to R311, Utah Underground Storage Tank Rules (Board Action Item)

Therron Blatter explained that on May 8, 2008, the Board approved proposed changes to the Utah UST Rules for publication and comment. The amendments to the rules implement UST Program changes mandated by the Federal Energy Policy Act of 2005, and added other clarifications and adjustments to the rules. The rules to be amended are:

- R311-200, Underground Storage Tanks: Definitions
- R311-203, Underground Storage Tanks: Notification, New Installations, Registration Fees, and Testing Requirements.
- R311-206, Underground Storage Tanks: Financial Assurance Mechanisms.

The proposed rule changes were published in the Utah State Bulletin on June 15, 2008. The public comment period was held from June 16, 2008, through July 16, 2008, and a public hearing to receive comments on the proposed changes was held on July 1, 2008. No comments were received during the public comment period. The Division now requests that the Board adopt the proposed rules changes to R311-200, R311-203, and R311-206. It is also requested that the effective date of the new rules be August 18, 2008.

It was moved by Dennis Riding and seconded by R. Ryan Dupont, and UNANIMOUSLY CARRIED that the Proposed Rule Changes to R311, Utah Underground Storage Tank Rules, be approved with an effective date of August 18, 2008.

V. Board action on Order embodying the Board's decision in the matter of Conditional Approval of Corrective Action Plan – Former Gold Cross Ambulance (Board Action Item)

Carlton Christensen reminded the Board members that in the June meeting, the Board held an Administrative Hearing in regards to the conditional approval of the CAP for the Former Gold Cross Ambulance facility. In the hearing, the Board heard the arguments and testimonies from both parties. Ultimately, the Board concluded that the Executive Secretary (UST) had taken appropriate action based on the conditions set forth in statute and as such, upheld the approval of the CAP.

It was moved by Michael Brehm and seconded by Richard Sprott, and MAJORITY RULED that the action taken by the Board to uphold the conditional approval of the Corrective Action Plan for the Former Gold Cross Ambulance facility be ratified. John Newman abstained from voting on this motion.

VI. Used Oil Section

A. Stipulation and Consent Order between the Board and Clean Harbors Environmental Services, Inc. (Board Action Item)

Cheryl Prawl discussed the proposed Stipulation and Consent Order (SCO) No. 0801003 between the Board and Clean Harbors Environmental Services, Inc., a permitted used oil transporter.

An inspection was conducted at the facility on August 8, 2007. During the inspection, three violations were documented and resulted in a Notice of Violation and Order for Compliance (NOV/CO) issued on January 2, 2008. The three violations were (1) not following the approved analysis plan - transporting used oil that had not been determined to be on-specification by a Utah-registered marketer; (2) failing to determine the halogen content of used oil it transported; and, (3) for failing to track used oil as "used oil."

To resolve the violations, Clean Harbors applied for a permit modification to its transporter permit. The Executive Secretary approved the permit modification on May 8, 2008. An SCO was also negotiated which includes a penalty of \$11,000 to be paid within 30 days of the effective date of the SCO. A 30-day public comment period on the proposed SCO was held from June 23, 2008 to July 22, 2008. No comments were received. The Division recommends the Board approve the proposed SCO.

Ms. Prawl clarified that Clean Harbors operates three hazardous waste management facilities in Utah: the Aragonite Incinerator, the Grassy Mountain Landfill, and the Clive Storage Facility. The used oil transportation operations are not part of these three facilities. However, the used oil inspections were done at the Aragonite facility. Ms. Prawl also clarified that the used oil transporter permit was modified, not the Aragonite Incinerator Facility permit.

Ms. Prawl explained that the Clean Harbors used oil transporter permit only allows transportation of on-specification oil from the Clive Storage Facility, delivered via railcar, to the Aragonite facility. After the inspection, it was determined that Clean Harbors was collecting used oil from numerous generators in Utah and then transporting it to the Aragonite Facility. The oil that was collected was not on-specification and was not tested.

Kevin Murray inquired about Clean Harbors' compliance history. Ms. Prawl stated this is the first time a NOV/CO has been issued to the Clean Harbors used oil transporter company. Dennis Downs clarified the violations were not related to any hazardous waste issues. The violations were specific to the Used Oil Program only.

Michael Brehm noted that no information was provided regarding quantity or timeframe of the violations and questioned if the penalty amount was assessed on the level/seriousness of the violation rather than time or quantity. Ms. Prawl explained that because the oil was eventually burned at the Aragonite Incinerator, it was not mis-managed. Most of the problems occurred because the used oil transporter permit required the oil to be handled in a certain manner, and the company failed to comply with the permit. However, now that the permit has been modified, these violations should not occur again.

Mr. Brehm asked if the company needs to inform its customers as to the final disposition of the used oil since they may not view burning the oil as recycling. Ms. Prawl stated that the main goal is to have used oil recycled and the Aragonite Facility is utilizing the oil for its BTU value for their incinerator and therefore it is being re-used for fuel. As long as the oil is being burned for its BTU value or energy content, it is still being recycled. Currently, the used oil is being transported to the Clive Facility, which is a permitted used oil transfer facility.

It was motioned by John Newman and seconded by Ryan Dupont and unanimously carried to approve the proposed Stipulation and Consent Order (SCO) No. 0801003 to resolve Notice of Violation No. 0711029 between the Board and Clean Harbors Environmental Services, Inc.

VII. Commercial/Federal Facilities

A. Stipulation and Consent Order between the Board and EnergySolutions LLC (Board Action Item)

Mark Christensen reviewed the proposed Stipulation and Consent Order (SCO) No. 0802005 between the Board and EnergySolutions to resolve Notice of Violation (NOV) No. 0801002.

On January 24, 2008, the Executive Secretary issued an NOV to EnergySolutions. Violations included the following: (1) failure to reject a container that previously contained PCB liquid (free liquid in the container). Mr. Christensen explained that the facility accepted a container that previously held PCBs,

and contained less than one liter of liquid, which was collected. The container was subsequently treated by macroencapsulation and disposed in an engineered landfill cell. The container should have been rejected to the generator, because it contained free liquid. Not only was the container not returned to the generator, the Permittee stored, treated, and disposed of the container; (2) failure to provide the Executive Secretary with a treatment formula that required approval (treated and disposed waste). Mr. Christensen explained that the facility failed to notify the Executive Secretary of a treatment formula and failed to receive approval prior to using that treatment formula; and, (3) failure to submit an updated Contingency Plan to other emergency response organizations. Mr. Christensen explained that although the initial Contingency Plan was submitted as required, the recent revision was not provided to the response agencies. This plan was modified three times in 2007 and this was the only time the response agencies were not notified.

Mr. Christensen stated that all violations were self-identified by the facility and all violations have been resolved. The proposed SCO includes a penalty of \$2,314.00. A 30-day public comment period on the proposed SCO was held from June 5, 2008, and concluded on July 7, 2008. No comments were received. The Executive Secretary recommends the Board approve the proposed SCO.

Michael Brehm asked if Board action could be taken on this agenda item as an amount is not indicated in the proposed SCO (Section 9). Dennis Downs recommended that the dollar amount be included in the Board's motion, so the penalty amount is clearly understood.

It was motioned by Michael Brehm and seconded by Kevin Murray and unanimously carried to approve the proposed Stipulation and Consent Order (SCO) No. 0802005 to resolve Notice of Violation No. 0801002 between the Board and EnergySolutions, L.L.C. with a penalty of \$2,314.00.

B. EnergySolutions LLC Request for a site-specific treatment variance for cemented uranium extraction process residues (Information Item Only)

Otis Willoughby discussed the request from EnergySolutions to renew a site-specific treatment variance for enriched uranium waste containing waste codes D005, D006, D007, F001, F002, and F005. EnergySolutions requested this same variance for this generator which was approved by the Board on September 13, 2007.

To date, EnergySolutions has received 600 cubic feet of this waste out of approximately 4,500 cubic feet possible. The Mixed Waste Facility proposes to continue receiving cemented monoliths containing enriched uranium residuals. This material retains hazardous waste codes for barium, cadmium, chromium, and spent solvents. The generator has encapsulated the waste in concrete for security reasons. This waste meets all license conditions for radioactive waste disposal at the facility.

EnergySolutions proposes to receive this waste for macroencapsulation in the Mixed Waste Landfill Cell rather than chemical stabilization, as required. This request is based on the fact that the waste has already been encapsulated in concrete at the generator's site. Treating this waste by the required method would mean grinding the waste and potentially exposing workers to unnecessary contamination.

The proposed treatment will further encapsulate the waste and protect it from contact with precipitation, thereby decreasing the potential of leaching. Final disposal of the waste will occur in the Mixed Waste Disposal Cell at the EnergySolutions Mixed Waste Facility.

A 30-day public comment period on the variance request began on August 7, 2008 and will conclude on September 5, 2008. A public hearing on this issue will be held in the Tooele County Courthouse on August 21, 2008 at 7:00 p.m.

This is an information item only. A formal recommendation will be made to the Board at the September 11, 2008 meeting. Tim Orton, representative from EnergySolutions, attended the meeting to answer any questions from the Board.

C. Stipulation and Consent Order between the Board and Clean Harbors, Grassy Mountain LLC (Information Item Only)

Ed Costomiris presented a proposed Stipulation and Consent Order (SCO) between the Board and Clean Harbors Grassy Mountain Facility to resolve Notice of Violation (NOV) No. 0711031.

On January 8, 2008, the Executive Secretary issued an NOV to the Clean Harbors Grassy Mountain Facility. Violations included the following: (1) storage of used oil in containers with structural defects and that were leaking; (2) failure to sample and analyze the wheel wash collection tanks annually; (3) failure to incorporate the required certification statement on certain documents; and, (4) failure to inspect the leachate tanks within twelve months of the previous inspection.

All violations have been resolved. The SCO includes a penalty of \$16,174.00.

A 30-day public comment period on the proposed SCO began on July 24, 2008 and will conclude on August 25, 2008. This is an information item only. A formal recommendation will be made to the Board at the September 11, 2008 meeting.

Carlton Christensen asked if there is any history of these violations occurring in the past at this facility. Mr. Costomiris stated that with the exception of the inspection of the tanks that were leaking, all the violations are new. Mr. Costomiris further stated that the container leaking violation involved used oil.

Dennis Riding requested clarification on the wheel wash facility. Mr. Costomiris stated that each of the landfill cells have a wash facility to clean the wheels of each truck as it leaves the landfill. Any waste that may have gotten onto the vehicle is collected and stored into a tank. The facility is required to analyze the waste from the wheel wash operation on an annual basis to ensure no volatile organics are being emitted into the atmosphere.

VIII. Chemical Demilitarization

A. TOCDF Update

Marty Gray reported that the Newport Chemical Depot in Indiana has completed its mission. This depot is a small site that only neutralized VX agent, and now is in the process of shipping secondary waste off-site.

TOCDF has temporarily finished its 155mm projectile campaign. Originally, there were 55,000 projectiles to process. Approximately 200 remain to be processed. However, the last remaining 155mm projectiles cannot be processed until a solution is developed to deal with safety issues such as leaks, rust and explosive components which remain stuck inside the projectiles.

TOCDF's next campaign will process the ton containers. TOCDF has sampled every ton container for mercury and determined that approximately 15% of the ton containers contain mercury and over half of them have heels that are too high to process in the metal parts furnace without removing some of the agent. TOCDF is currently systemizing the transfer system. Once that is finished, TOCDF will begin processing the low mercury ton containers.

Tennessee Valley Authority (TVA) is the contractor currently performing closure activities at CAMDS. The unit TVA is currently closing is the pollution abatement system, which was part of the deactivation furnace. Progress is continuing on closure of this facility. However, the Army recently announced that closure of the CAMDS facility will be turned over to EG&G. Therefore, TVA will not finish the closure work at the facility. EG&G will begin closure activities in April 2009. As part of the consolidation efforts, the Army also awarded EG&G the contract to dispose of the GA ton containers and the Lewissite ton containers currently stored at the facility.

Michael Brehm asked if the change of the contractor at the CAMDS Facility presents challenges because of the size and uniqueness of the facility and whether there will be a transitional period. Mr. Gray stated there will be a transitional period. The Army has set it up so that TVA will continue working and EG&G will begin working on closure plans and will also complete all of the administrative work, so that in April 2009 they can proceed quickly to accomplish all the closure activities.

B. Announcement of new Commander Colonel Gerald L. Gladney, replacing Colonel Frederick Pellissier

Marty Gray informed Board members that the new commander for Deseret Chemical Depot is Colonel Gerald L. Gladney. Colonel Glandey most recently was the Director of Chemical Stockpile Operations with the Chemical Materials Agency. Colonel Pellissier will be stationed at the U.S. Central Command at MacDill Air Force Base in Tampa, Florida.

C. Environmental Assessment – Incineration of Lewisite and GA agent

Elizabeth Lowes, EG&G/TOCDF representative, discussed a public notice that was provided to the Board members regarding the Army's plans for the treatment and disposal of chemical agents GA and Lewisite at the Deseret Chemical Depot. The US Army Chemical Materials Agency announced it will prepare an Environmental Assessment (EA) to evaluate the potential impacts associated with the treatment and disposal of these chemical agents currently stored at the DCD. CMA will evaluate in this EA the addition of a small liquid incinerator to facilitate treatment and disposal of the small quantities of GA and Lewisite in a manner that allows the on-going mustard and secondary waste processing operations at TOCDF to proceed on schedule. (A copy of the Public Notice is available with the meeting minutes.)

Gary McCloskey, EG&G General Manager, stated there are currently 10 ton containers of Lewisite agent at DCD. Lewisite is a blister agent and is made up of about 1/3 arsenic as an ingredient as opposed to sulfur mustard. There are approximately 22,000 lbs. of lewisite agent in the chemical stockpile at DCD. There are currently four ton containers of GA agent. Two of them contain only GA agent and the other two may contain a thickener know as Yukon, with the active ingredient being GA agent. GA is an organic phosphate, very similar to the nerve agent GB that the facility previously handled.

Mr. McCloskey stated that the reason for using a small incinerator as opposed to using the TOCDF facility is that it takes several months to do a facility conversion for an individual agent. TOCDF has approximately 950 employees whereas the smaller incinerator would be operated by only 20 to 30 employees. The small incinerator has exactly the same safety features and destruction characteristics as the large incinerators at TOCDF.

Carlton Christensen asked if the smaller incinerator has ever been built or tested. Mr. McCloskey explained that the incinerator was built and tested with fuel oil and is identical in design characteristics to the liquid incinerator at TOCDF but with only about 30% of the capacity. Ms. Lowes stated that additional design work will be needed to address the metal contents of these agents. Mr. Christensen asked how the Army will deal with the arsenic issue. Ms. Lowes indicated that wet scrubber systems are very effective at removing the arsenic. Ms. Lowes further stated they are looking at filter systems for the small incinerator similar to what is being proposed for TOCDF to address the mercury issue.

Ryan Dupont asked if the mercury is a contaminant or part of the agent itself, and where it comes from. Mr. McCloskey responded that it is not part of the agent. When lewisite was manufactured, mercuric chloride was used as a catalyst, so there is residual mercuric chloride or mercury contamination in the lewisite.

Michael Brehm noted that if significant impacts or significant public controversy are determined during the environmental assessment, it could make it difficult to avoid completing an environmental impact statement.

Ms. Lowest stated that the environmental assessment is not so much driven by public controversy. The assessment will determine whether there are impacts sufficient enough to prepare an environmental impact statement.

D. Department of the Defense – Report to Congress

Dennis Downs distributed a copy of the Department of Defense (DOD) Report, Chemical Demilitarization Program, Semi-Annual Report to Congress to Board members. (A copy of the report is

provided with the meeting minutes.) Mr. Downs stated this report has received media attention and felt the Board should have the report to review. This report is a semi-annual report that is required to be given to Congress by the DOD on its progress toward destruction of the US Stockpile of lethal chemical agents and munitions and the efforts to meet the treaty deadlines of 2012 but not later than 2017.

Mr. Downs stated the report identified three options as possible paths forward for accelerating destruction of the remaining chemical weapons stockpile. (1) provide schedule incentives to ensure destruction is complete by 2012; (2) transport portions of the stockpile to operational chemical weapons destruction facilities (3) accelerate the ACWA Program acceleration option. Option 2 became a media issue because the report specifically mentioned moving waste from Colorado and Oregon to Utah. Mr. Downs explained that transportation of chemical munitions across state borders would require a change in the law. Mr. Downs reminded Board members that both Governor Huntsman and former Governor Leavitt have taken a very strong stand that the position of the State of Utah is that these chemical weapons from other stockpile facilities will not be allowed in Utah for disposal.

Dennis Downs introduced Ted Ryba, TOCDF Site Project Manager. Mr. Ryba stated he is in agreement with the facts Mr. Downs presented, and the option to bring additional weapons into Utah for disposal is not being addressed at this time. Mr. Ryba stated that the TOCDF facility is on schedule to meet the 2012 treaty deadline including the Lewisite and GA agent. Mr. Ryba reviewed in detail the information provided in the report.

IX. Other Business

A. Utah Legislature Interim Committee/Statute Sunset Review

Dennis Downs reminded the Board that during the next legislative session both the Solid and Hazardous Waste Act and the Used Oil Management Act are up for sunset review by the Legislature. These two items are on the Agenda of the Natural Resources, Agriculture, and Environment Interim Committee meeting scheduled on Wednesday, August 20, 2008. (A copy of the Notice of Meeting and Agenda was distributed to Board members.) This committee will be hearing information regarding these two programs and making a preliminary recommendation at this meeting to re-authorize the programs. If the recommendation is made for the programs to continue, these programs likely will be included into a larger bill to be voted on in the 2009 Utah Legislature session. The Legislature usually re-authorizes the programs for ten years.

B. Four-day work week for all UDEQ offices

Dennis Downs informed the Board that Governor Huntsman has directed most state employees to work four, 10-hour days each week. UDEQ's office hours are open 7 a.m. to 6 p.m., Monday through Thursday. All UDEQ managers have tried to stagger employees' schedules to ensure the new established office hours are covered. The Governor has asked all managers to be flexible. The response has been very positive.

Rick Spratt stated that, looking at the bigger picture, it has been interesting to see the attention this four-day work week has received nationally. Numerous other states and governments within Utah who have been thinking about a similar shift are all now looking at how it will work for State government.

Mr. Spratt also informed the Board that UDEQ is anticipating a new building being constructed to the west of the current location within the next couple of years. A dedicated child care facility on the campus is also being considered. This child care facility would be a great benefit for employees particularly if DEQ stays on the four-day work week schedule. Mr. Spratt indicated the State will realize savings in energy bills and the environment will benefit on Fridays when fewer cars will be making the commute during rush hour. After the year trial time, it will be evaluated to see if it is working for the employees.

C. Mr. Murray requested clarification regarding the Clean Harbors Facilities and the various enforcement actions and proposed settlements that come before the Board. Mr. Murray asked specifically about the relationships between these facilities and whether the same management is responsible for all Clean Harbors facilities.

Dennis Downs explained that the Grassy Mountain Facility hazardous waste landfill, the Aragonite Facility incinerator, and the Clive Facility storage/transportation facility are owned by Clean Harbors. The enforcement and compliance activities at these three facilities are done on an annual basis. The Division consolidates an entire year of violations and a separate Notice of Violation is issued to each facility independent of the other. Clean Harbors' used oil business is managed separately from the hazardous waste business.

Mr. Murray stated that he has been on the Board long enough to observe that the violations for these facilities are continuing with regularity. He hopes that the facility is improving and that management is taking the lead in improving compliance as the company is in business to handle these wastes according to the rules. Mr. Downs stated that violations do occur and if repeat violations occur year after year, then the facility does pay additional penalties for repeat violations. Many of the violations are self-reported.

Gary Mossors stated he is familiar with the processes at these facilities and they do operate as separate facilities, especially the landfill. Mr. Mossor asked if the Clive Facility is still Aragonite management or separate management. Ed Costomiris stated that Clive is still handled under Aragonite management. Mr. Mossor stated that people under one management group should be able to work together.

- D. Ryan Dupont requested that the Board meetings start at 1:30 p.m. instead of 1:00 p.m. to accommodate his teaching schedule during this semester. The Board members were in agreement with this request.
- E. **The next Board meeting will be held on September 11, 2008 at 1:30 p.m., in the Utah Department of Environmental Quality, (Conference Room 101), located at 168 North 1950 West, (Bldg. #2), SLC.**

X. **Adjourn**

The meeting adjourned at 2:26 p.m.